A

## JERRY WA DUSING & ANOR

**v.**

## MENTERI KESELAMATAN DALAM NEGERI MALAYSIA & ANOR

B

COURT OF APPEAL, PUTRAJAYA
ROHANA YUSUF JCA
TENGKU MAIMUN JCA
ABANG ISKANDAR JCA
C [CIVIL APPEAL NO: W-01(M)-182-05-2014]
28 OCTOBER 2014
[2014] CLJ JT(9)

D ***ADMINISTRATIVE LAW:*** *Judicial review - Remedies - Declaration - Constitutional rights to use word "Allah" in religious publication - Whether prayers sought concerned future rights - Certiorari and mandamus - Order for - Withdrawal of prayers - Whether affected declaratory relief sought - Whether declaration may be granted even if it was not prayed for jointly or in alternative with other remedies - Whether*
E *appellants threatened by respondents' act and were facing legal uncertainty - Whether application for order of declaration appropriate - Rules of the High Court 1980, O. 15 r. 16 & O. 53 r. 2(2)*

F ***CONSTITUTIONAL LAW:*** *Fundamental liberties - Freedom of religion - Judicial review - Application for leave - Prohibition of use of word "Allah" in publication - Application in relation to church in Sabah - Native Bumiputra Christians - Whether word "Allah" used for many generations - Whether state law enacted under art. 11(4) Federal Constitution existed in Sabah to prohibit use of word "Allah"*

G ***CIVIL PROCEDURE:*** *Declaration - Application for - Judicial review - Constitutional rights to use word "Allah" in religious publication - Whether prayers sought concerned future rights - Certiorari and mandamus - Order for - Withdrawal of prayers - Whether affected declaratory relief sought - Whether declaration may be granted even if it*
H *was not prayed for jointly or in alternative with other remedies - Whether appellants threatened by respondents' act and were facing legal uncertainty - Whether application for order of declaration appropriate - Rules of the High Court 1980, O. 15 r. 16 & O. 53 r. 2(2)*

I ***CIVIL PROCEDURE:*** *Judicial review - Application for leave - Dismissal of - Appeal to Court of Appeal - Whether necessary to go into merits of case at leave stage - Whether appellants had arguable case - Whether application frivolous - Whether leave to be granted*

The second appellant, Sidang Injil Borneo, was a church incorporated under the Trustees Incorporation Ordinance (Sabah Cap. 148) and the first appellant was the president of the church. The appellants brought in seven titles of publications from Indonesia which consisted of Sunday school materials for religious education for the members of the church. However, the said materials, which contained the use of the word "Allah", were detained by the customs officer. *Vide* letter dated 24 October 2007, the Ministry of Internal Security ('Minister') explained, *inter alia*, that "… Kerajaan telah memutuskan penggunaan istilah atau perkataan Allah, Kaabah, Baitullah dan Solat hanya khusus untuk digunakan di dalam mana-mana bahan penerbitan/cetak berkaitan agama Islam dan tidak boleh digunakan di dalam penerbitan agama lain". The appellants then filed an application in the High Court for leave to apply for judicial review and sought the following reliefs, *ie*, (i) an order for *certiorari* to quash the decision of the Minister to refuse the importation and to withhold delivery of the publications; (ii) an order for *mandamus* to direct the Minister to return the publications to the appellants; and (iii) for several declarations, which essentially concerned the appellants' and/or their congregations' constitutional right to use the word "Allah" in the Bahasa Malaysia and/or Bahasa Indonesia translations of the Bible as well as in all religious publications and materials ('all other publications'). Sometime in January 2008, the detained publications were released to the appellants. As such, the reliefs for *certiorari* and *mandamus* were accordingly withdrawn. Following the Court of Appeal's decision in *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* ('the *Herald*'s case') which decided that the word "Allah" was not an integral part of the faith and practice of Christianity, the High Court dismissed the appellants' application for leave. Hence, this appeal. The appellants argued that in light of the majority judgment of the Federal Court in the *Herald*'s case, the High Court was no longer bound by the Court of Appeal's decision in that case. Further, it was submitted that while the first part of the application which was withdrawn related to the Sunday school publications, the second part which related to all other publications was still pertinent. In objecting to this appeal, the respondents submitted, *inter alia*, that (i) the relief of declaration sought on all other publications concerned the appellants' future rights which ought not to be granted; and (ii) in light of O. 53 r. 2(2) of the Rules

A of the High Court 1980 ('RHC'), declaratory relief could not be sought on its own in an application for judicial review. Instead, it was argued that the appellants should have sought the declaratory relief under O. 15 r. 16 of the RHC.

B **Held (allowing appeal; setting aside decision of the High Court)**

**Per Tengku Maimun JCA delivering the judgment of the court:**

C **(1)** The application for judicial review consisted of two parts. The first part relates to the prohibition on the publications that were detained by the respondents while the second part relates to the general prohibition on all other publications. Although the appellants withdrew the prayers for an order for *certiorari* and *mandamus*, there were other prayers in relation to D all other publications which had not been withdrawn. Hence, notwithstanding the withdrawal of the first part of the application, the second part which was premised on the respondent's decision to prohibit the use of the word "Allah" in all other publications remained in dispute and the issues E contained in the prayers for declaration was still alive. (paras 10 & 11)

**(2)** The finding of the Court of Appeal in the *Herald*'s case that the word "Allah" was not an integral part of the Christianity F faith had been ruled as a mere *obiter* by the Federal Court. Further, the application before the High Court Judge herein concerned a church in Sabah where native Bumiputra Christians had been using the word "Allah" for many generations in all aspects of the profession and practice of G their Christian faith. Further, there was non-existent in Sabah any state law enacted under art. 11(4) of the Federal Constitution which prohibits the use of the word "Allah" as opposed to nine other states which had enacted state laws on the prohibition. (para 13)

H **(3)** The appellants had properly sought the relief of declaration in their application for judicial review. The fact that the prayers for an order for *certiorari* and *mandamus* were withdrawn did not affect the application. In appropriate cases, declaration I may be granted by the court even if it was not prayed for

jointly or in the alternative with other remedies (*Sivarasa Rasiah v. Badan Peguam Malaysia & Anor*; refd). Further, the Federal Court's decision in *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* decided that "O. 53 of the RHC had set out a specific procedure for an aggrieved party seeking relief, incorporating a declaration … against a public authority for infringement of his rights to which he was entitled to be protected under public law ... [W]here such an explicit procedure was created (as compared to the general provision under O. 15 r. 16 of the RHC) to cater for the purpose, then as a general rule, all applications for such relief must commence according to what is set down in O. 53 of the RHC. Otherwise, it was liable to be struck off for abusing the process of the court". (paras 16-19)

**(4)** The appellants were naturally threatened by the respondents' act and were facing legal uncertainty insofar as all the other publications were concerned. Hence, it was appropriate for the appellants to apply for the order of declaration in respect of all other publications (*Datuk Syed Kechik v. Government of Malaysia*; foll). (paras 20 & 21)

**(5)** This appeal was in respect of an application for leave for judicial review where the threshold was very low. It was not necessary to go into the merits of the case at the leave stage. The test was to see whether the appellants had an arguable case and that the application was not frivolous. The appellants had passed the threshold for leave to be granted. (para 22)

***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu kedua, Sidang Injil Borneo, adalah sebuah gereja yang diperbadankan di bawah Ordinan Pemegang Amanah (Pemerbadanan) (Sabah Cap. 148) dan perayu pertama merupakan pengerusi gereja tersebut. Perayu-perayu telah membawa masuk tujuh judul penerbitan dari Indonesia yang mengandungi bahan-bahan sekolah Ahad bagi pengajaran agama ahli gereja tersebut. Walau bagaimanapun, bahan-bahan tersebut, yang mengandungi perkataan "Allah", telah ditahan oleh pegawai kastam. Melalui surat bertarikh 24 Oktober 2007, Menteri Keselamatan Dalam Negeri ('Menteri') menerangkan, antara lain, bahawa Kerajaan telah memutuskan penggunaan istilah atau perkataan Allah, Kaabah, Baitullah dan Solat hanya khusus untuk digunakan di dalam mana-mana bahan penerbitan/cetak berkaitan agama Islam dan tidak boleh digunakan

di dalam penerbitan agama lain. Perayu-perayu kemudian memfailkan permohonan di Mahkamah Tinggi bagi semakan kehakiman dan menuntut relif-relif berikut, iaitu, (i) perintah *certiorari* untuk membatalkan keputusan Menteri yang melarang pengimportan dan penahanan penghantaran penerbitan tersebut; (ii) perintah *mandamus* untuk mengarahkan Menteri supaya mengembalikan penerbitan itu kepada perayu-perayu; dan (iii) bagi beberapa deklarasi yang menumpukan pada hak perlembagaan perayu-perayu dan/atau jemaahnya untuk menggunakan perkataan "Allah" dalam penterjemahan Kitab Injil Bahasa Malaysia dan/atau Bahasa Indonesia dan juga di dalam semua penerbitan dan bahan-bahan agama ('penerbitan lain'). Pada bulan Januari 2008, penerbitan yang ditahan itu telah dipulangkan kepada perayu-perayu. Oleh itu, relif-relif bagi *certiorari* dan *mandamus* telah pun ditarik balik. Mengikut keputusan Mahkamah Rayuan dalam *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* ('kes *Herald*') yang memutuskan bahawa kalimah "Allah" bukanlah sebahagian penting kepercayaan dan amalan agama Kristian, Mahkamah Tinggi menolak permohonan perayu-perayu bagi kebenaran. Oleh itu, rayuan ini. Perayu-perayu menghujahkan bahawa merujuk kepada keputusan majoriti Mahkamah Persekutuan dalam kes *Herald*, Mahkamah Tinggi tidak terikat dengan keputusan Mahkamah Rayuan dalam kes tersebut. Selanjutnya, dihujahkan lagi bahawa memandangkan bahagian pertama permohonan telah ditarik balik berkenaan penerbitan sekolah Ahad, bahagian kedua yang berkaitan dengan penerbitan lain masih mempunyai perkaitan. Membantah rayuan ini, Peguam Kanan Persekutuan menghujahkan, antara lain, bahawa (i) relif deklarasi yang dituntut bagi penerbitan lain adalah berhubung hak masa hadapan perayu-perayu dan tidak boleh dibenarkan; dan (ii) berikutan A. 53 k. 2(2) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), relif deklarasi tidak boleh dipohon dengan sendirinya bagi suatu permohonan semakan kehakiman. Sebaliknya, dihujahkan bahawa perayu-perayu sepatutnya menuntut relif deklarasi di bawah A. 15 k. 16 KMT.

**Diputuskan (membenarkan rayuan; mengenepikan keputusan Mahkamah Tinggi)**

**Oleh Tengku Maimun HMR menyampaikan penghakiman mahkamah:**

**(1)** Permohonan untuk semakan kehakiman mengandungi dua bahagian. Bahagian pertama berkaitan dengan larangan penerbitan yang ditahan oleh responden-responden manakala

bahagian kedua berkaitan dengan larangan am terhadap semua penerbitan lain. Walaupun perayu-perayu telah menarik balik perintah untuk *certiorari* dan *mandamus*, terdapat permohonan-permohonan yang berkaitan dengan penerbitan lain yang tidak ditarik balik. Oleh itu, tanpa mengambilkira penarikan balik bahagian pertama permohonan itu, bahagian kedua yang berkaitan dengan keputusan responden yang melarang penggunaan perkataan "Allah" dalam penerbitan lain masih kekal sebagai suatu pertikaian dan isu-isu yang terkandung dalam permohonan tersebut untuk deklarasi masih wujud.

**(2)** Dapatan Mahkamah Rayuan dalam kes *Herald* bahawa perkataan "Allah" bukanlah sebahagian penting agama Kristian telah diputuskan sebagai *obiter* oleh Mahkamah Persekutuan. Selanjutnya, permohonan di Mahkamah Tinggi di sini adalah berkaitan sebuah gereja di Sabah di mana anak negeri Bumiputra Kristian telah menggunakan perkataan "Allah" untuk beberapa generasi dalam semua aspek profesion dan amalan agama Kristian. Tambahan lagi, tiada undang-undang negeri di Sabah yang digubal di bawah per. 11(4) Perlembagaan Persekutuan untuk melarang penggunaan perkataan "Allah" berbanding dengan sembilan negeri lain yang telah menggubal undang-undang negeri bagi larangan tersebut.

**(3)** Perayu-perayu telah menuntut secara berpatutan relif deklarasi dalam permohonan mereka bagi semakan kehakiman. Fakta bahawa tuntutan permohonan bagi perintah *certiorari* dan *mandamus* telah ditarik balik tidak mejejaskan permohonan. Dalam kes-kes tertentu, deklarasi boleh diberikan oleh mahkamah walaupun ia tidak dipohon secara bersesama atau sebagai alternatif dengan remedi-remedi lain (*Sivarasa Rasiah v. Badan Peguam Malaysia & Anor*; dirujuk). Mahkamah Persekutuan memutuskan dalam kes *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* bahawa A. 53 KMT telah menetapkan prosedur spesifik bagi pihak terkilan yang menuntut relif, menggabungkan satu deklarasi … terhadap pihak berkuasa bagi pelanggaran haknya di mana beliau layak mendapat perlindungan di bawah undang-undang awam. Di mana prosedur jelas sebegitu diwujudkan (berbanding peruntukan am di bawah A. 15 k. 16 KMT) bagi menampung kehendak itu, maka sebagai peraturan am, semua permohonan

bagi relif sebegitu mesti dimulakan menurut apa yang dinyatakan di bawah A. 53 KMT. Jika tidak, ia boleh dibatalkan atas alasan penyalahgunaan proses mahkamah.

**(4)** Perayu-perayu terancam dengan tindakan pihak responden dan berhadapan dengan ketidakpastian undang-undang berkenaan penerbitan lain. Oleh itu, adalah berpatutan bagi perayu-perayu memohon untuk perintah deklarasi berkenaan penerbitan tersebut (*Datuk Syed Kechik v. Government of Malaysia*; diikuti).

**(5)** Rayuan ini adalah berkenaan permohonan kebenaran semakan kehakiman di mana ambangnya adalah rendah. Tiada keperluan untuk mengkaji merit kes pada peringkat kebenaran. Ujiannya adalah untuk memastikan sama ada perayu-perayu mempunyai kes yang boleh dibicarakan dan permohonannya bukan remeh. Perayu-perayu telah lulus ambang bagi kebenaran untuk diberikan.

**Case(s) referred to:**

*Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 5 CLJ 865 FC* ***(refd)***

*Datuk Syed Kechik Syed Mohamed v. Government of Malaysia & Anor [1978] 1 LNS 44 FC* ***(foll)***

*Kerajaan Malaysia & Ors v. Tay Chai Huat [2012] 3 CLJ 577 FC* ***(refd)***

*Sivarasa Rasiah v. Badan Peguam Malaysia & Anor [2002] 2 CLJ 697 CA* ***(refd)***

*Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors [2006] 1 CLJ 927 CA* ***(refd)***

*Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri [2014] 6 CLJ 541 FC* ***(refd)***

**Legislation referred to:**

Federal Constitution, art. 11(4)

Rules of the High Court 1980, O. 15 r. 16, O. 53 rr. 2(2), (4)

*For the appellants - Lim Heng Seng (Bobby Chew with him); M/s Chris Koh & Chew*

*For the respondents - Shamsul Bolhassan (Munahyza Mustapha with him); SFC*

*[Appeal from High Court, Kuala Lumpur; Judicial Review No: R2-25-407-2007]*

*Reported by Kumitha Abd Majid*

## JUDGMENT

**Tengku Maimun JCA:**

**[1]** The factual matrix of this appeal is as follows. The second appellant is a church incorporated under the Trustees (Incorporation) Ordinance (Cap 148) (Sabah) while the first appellant is the president of the church.

**[2]** For the religious education of the children of the members of the church, the appellants brought in seven titles of publications from Indonesia. The publications which consist of Sunday school materials were detained by the customs officer.

**[3]** The first appellant's request and appeal for the return of the publications were denied. In a letter dated 24 October 2007 (the said letter), the Ministry of Internal Security explained the basis of the decision as follows (pp. 134-136: rekod rayuan jilid 2):

> 2. Kementerian telah meneliti surat tuan berkenaan penahanan buku bagi pendidikan kanak-kanak Kristian yang diimport dari Bandung Indonesia yang kemudiannya telah ditahan oleh Kementerian di lapangan terbang LCCT pada 15 Ogos 2007.
>
> 3. Kementerian juga mendapati seperti mana di dalam perenggan 4 dan 5 pihak tuan telah membangkitkan beberapa perkara iaitu mengenai kebebasan beragama menurut Artikel 11 Perlembagaan Negara dan kenyataan YAB Menteri Keselamatan Dalam Negeri mengenai Al kitab yang mengandungi perkataan "Allah" dibenarkan digunapakai di gereja-gereja di Malaysia. ...
>
> 3. Perkara 3(1) Perlembagaan Persekutuan, ada menyebut bahawa Agama Islam adalah agama rasmi Persekutuan. Sungguhpun demikian, agama lain boleh diamalkan dengan aman dan damai di mana-mana bahagian Persekutuan. Selanjutnya Perkara 11(1)(3)(a) Perlembagaan Persekutuan menyebut, setiap orang berhak menganuti dan mengamalkan agamanya dan, tertakluk kepada Fasal (4), mengembangkannya, di samping berhak menguruskan hal ehwal agamanya sendiri. Fasal 4, Perkara 11, Perlembagaan Persekutuan tersebut ialah:
>
> > Undang-undang Negeri, dan berkenaan dengan Wilayah-Wilayah Persekutuan Kuala Lumpur, Wilayah Persekutuan Labuan dan Putrajaya, undang-undang Persekutuan boleh mengawal atau menyekat pengembangan apa-apa doktrin atau kepercayaan agama di kalangan orang yang mengamal agama Islam.

4. Bersesuaian dengan itu, terdapat negeri-negeri yang mewujudkan undang-undang/enakmen negeri masing-masing bagi mengawal pengembangan agama di kalangan orang Islam dengan masing-masing meluluskan perkataan/istilah agama Islam yang dilarang digunakan di dalam bahan penerbitan agama lain selain daripada agama Islam.

...

7. ... Pada 2 Disember 1981 Kerajaan telah mewartakan larangan terhadap Alkitab di Malaysia melalui Warta Kerajaan P.U.(A) 15/82 di bawah Seksyen 22 Akta Keselamatan Dalam Negeri. Setelah mengambil kira rayuan badan-badan agama Kristian ketika itu, Kerajaan telah memberikan pengecualian khas melalui Warta Kerajaan P.U.(A) 134 bertarikh 13 Mei 1982 bahawa pemilikan penerbitan atau penggunaan Al-Kitab adalah hanya dibenarkan di dalam gereja oleh orang-orang yang beragama Kristian di seluruh Malaysia.

8. Dalam pada itu, perbezaan perkataan dan jumlah perkataan di dalam undang-undang negeri terus menimbulkan kekeliruan dan kegelisahan di kalangan masyarakat apabila pelaksanaan penguatkuasaan terhadap penggunaan istilah/perkataan di dalam penerbitan agama lain tidak dijalankan secara berkesan. Sehubungan itu, kerajaan telah membuat keputusan pada 19 Mei 1986 bahawa daripada keseluruhan 16 perkataan larangan, menetapkan empat perkataan iaitu Allah, Kaabah, Solat dan Baitullah adalah merupakan istilah/perkataan khusus agama Islam yang tidak boleh diguna pakai dalam bahan penerbitan agama lain kecuali bagi menerangkan konsep-konsep berkaitan dengan agama Islam. Berikutan itu Kementerian telah mengeluarkan surat pemberitahuan keputusan Bil KKDN S.59/3/6/A Klt 2 bertarikh 5 Disember 1986 kepada penerbit-penerbit agama Kristian bagi mematuhi keputusan itu.

9. Kesimpulannya, Kerajaan telah memutuskan penggunaan istilah atau perkataan Allah, Kaabah, Baitullah dan Solat hanya khusus untuk digunakan di dalam mana-mana bahan penerbitan/cetak berkaitan agama Islam dan tidak boleh digunakan di dalam penerbitan agama lain.

10. Walau bagaimanapun, pihak Kerajaan juga membenarkan penerbitan bertajuk Al-kitab digunakan oleh semua penganut agama Kristian di Negara ini di dalam gereja-geraja sahaja dan TIDAK di tempat-tempat lain. Kebenaran ini tidak meliputi lain-lain penerbitan agama Kristian selain daripada Bible berbahasa Melayu iaitu Al-kitab.

...

12. Melalui penjelasan ini, adalah diharapkan agar pihak tuan dapat memahami isu larangan penggunaan empat perkataan khusus ini. Perlu diingat semua penerbitan agama lain sama ada yang diimport atau yang diterbitkan di dalam Malaysia yang mengandungi mana-mana istilah khusus agama Islam adalah dilarang diedarkan di dalam Malaysia. Oleh yang demikian pihak tuan hendaklah melaksanakan keputusan tolak pengimportan/tahan penghantarserahan ke atas penerbitan-penerbitan berkenaan.

**[4]** On 10 December 2007, the appellants filed an application in the High Court at Kuala Lumpur for leave to apply for judicial review, seeking for the following reliefs:

(i) an order for *certiorari* to quash the decision of the Minister of Internal Security to refuse the importation and to withhold delivery of the publications;

(ii) an order for *mandamus* to direct the Minister to return the publications to the appellants; and

(iii) for several declarations, which essentially concern the appellants' and/or their congregations' constitutional right to use the word "Allah" in the Bahasa Malaysia and/or Bahasa Indonesia translations of the Bible as well as in all religious publications and materials (all other publications).

**[5]** Sometime in January 2008, the publications that were detained were released to the appellants. The application in respect of the reliefs for *certiorari* and *mandamus* was accordingly withdrawn by the appellants.

**[6]** In the High Court, learned Senior Federal Counsel (SFC) objected to the application for leave on the following grounds:

(i) since the publications have been released, there is no decision to be impugned within the ambit of O. 53 r. 2(4) of the Rules of the High Court 1980 (RHC);

(ii) since the publications have been released, the subject matter of the judicial review is now rendered academic; and

(iii) as the prayers for *certiorari* and *mandamus* have been withdrawn, there is nothing for the prayers for declaration to stand with, either jointly or alternatively, as required under O. 53 r. 2(2) of the Rules of the High Court 1980 (RHC).

**[7]** In a five-paragraph judgment, the learned High Court Judge dismissed the application for leave. For ease of reference, we reproduce below the judgment of the learned judge:

> This is an application by the applicants for leave to commence judicial review against the respondents. I have scrutinized the cause papers and submissions made by the parties.
>
> [2] There were 22 reliefs sought by the applicants in this application. However, the applicants have withdrawn reliefs pertaining to the publications listed in prayer (a) of enclosure 1. The only issue that is still alive as contained in the 13 declarations sought by the applicants pertains to the use of the word "Allah" on all other publications.
>
> [3] On the use of the word "Allah", I have no choice but to refer to the decision of the Court of Appeal in the case of *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* [2013] 8 CLJ 890. Although that decision was pertaining to the Herald publication, all the three learned Court of Appeal judges have held that the word "Allah" is not an integral part of the faith and practice of Christianity and therefore the prohibition by the Minister is not unconstitutional.
>
> [4] Hence, as long as that decision stands (the appeal in the Federal Court is still pending), applying the doctrine of *stare decisis*, this court is bound by that decision, being the decision of the more superior court.
>
> [5] Based on that, I am of the view there is no serious issue to be tried; hence this application for leave is therefore dismissed with no order as to costs.

**[8]** Against the decision of the High Court, the appellants appealed to the Court of Appeal. Before us, learned counsel for the appellants submitted that:

(i) the application for judicial review consists of two parts. While the first part of the application which was withdrawn relates to the Sunday school publications, the second part which relates to all other publications is still pertinent;

(ii) in the light of the majority judgment of the Federal Court in *Herald*'s case, the High Court is no longer bound by the decision of the Court of Appeal in the said case;

(iii) relying on *Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2002] 2 CLJ 697; [2002] 2 MLJ 413 and *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865, it is perfectly in order for the applicant in a judicial review application to seek relief for declarations only;

(iv) the appellants have every right to seek declarations with regard to the decision on all other publications over which there is a cloud of anxiety and uncertainty hanging over their heads. The case of *Datuk Syed Kechik Syed Mohamed v. Government of Malaysia & Anor* [1978] 1 LNS 44; [1979] 2 MLJ 101 was cited in support thereof; and

(v) the role of the High Court at the leave application stage is only to see if the application for leave discloses an arguable case and is not frivolous.

**[9]** In response, learned SFC repeated the objections advanced in the High Court. It was further submitted by learned SFC that the relief of declaration sought on all other publications concerns the appellants' future rights which ought not to be granted.

## Our Decision

**[10]** We agree with the learned counsel for the appellant that the application for judicial review before the learned High Court Judge consists of two parts. The first part relates to the prohibition on the publications that were detained by the respondents which had eventually been released, while the second part relates to the general prohibition on all other publications. The second part of the application is founded on para. 12 of the said letter of the Ministry which reads:

> Perlu diingat semua penerbitan lain sama ada yang diimport atau yang diterbitkan di dalam Malaysia yang mengandungi mana-mana istilah khusus agama Islam adalah dilarang diedarkan di dalam Malaysia.

**[11]** As stated by the learned trial judge, the appellants prayed for 22 reliefs in the judicial review application. Following the release of the publications by the respondents, the appellants withdrew two of the prayers, namely the prayers for an order for *certiorari* and *mandamus*. There are other prayers in relation to all other publications which had not been withdrawn by the appellants. Hence, notwithstanding the withdrawal of the first part of the application, the second part of the application which was premised

on the respondent's decision to prohibit the use of the word "Allah" in all other publications remain in dispute. We therefore agree with the learned High Court Judge that the issue contained in the prayers for declarations which pertain to the use of the word "Allah" in all other publications is still alive. We note that there was no cross-appeal by the respondents on the ruling of the High Court that the issue of declaration sought by the appellants is still alive. The submission of learned SFC that the application for leave for judicial review has been rendered academic and is an exercise in futility is thus devoid of merit.

**[12]** In not granting leave to the appellants, the High Court had relied on only one ground, namely that it held itself bound by the Court of Appeal's decision in the *Herald*'s case. In *Herald*'s case, the Court of Appeal had stated that the word "Allah" is not the essential or integral part of the religion of Christianity (see *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur*, *supra* at pp. 932-933 and 963).

**[13]** The finding of the Court of Appeal that the word "Allah" is not an integral part of the faith of Christianity had been ruled as a mere *obiter* by the Federal Court (see *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* [2014] 6 CLJ 541 at p. 584). In the circumstances, we find that the basis for the decision of the learned High Court Judge is no longer sustainable (see *Kerajaan Malaysia & Ors v. Tay Chai Huat* [2012] 3 CLJ 577; [2012] 3 MLJ 149). In any event, as submitted by learned counsel for the appellants, the application before the learned High Court Judge concerns a church in Sabah where native Bumiputra Christians have been using the word "Allah" for many generations in all aspects of the profession and practice of their Christian faith. Further, there is non-existent in Sabah, any state law enacted under art. 11(4) of the Federal Constitution to prohibit the use of the word "Allah" as opposed to nine other states which had enacted state laws on the prohibition.

**[14]** On whether the appellants, having withdrawn the reliefs for *certiorari* and *mandamus* are barred from seeking declaration, learned SFC relied on O. 53 r. 2(2) of the RHC which provides:

> An application for judicial review may seek any of the said reliefs, including a prayer for a declaration, either jointly or in the alternative in the same application if it relates to or in connection with the same subject matter.

**[15]** It was submitted by learned SFC that in the light of O. 53 r. 2(2) of the RHC, declaratory relief cannot be sought on its own in an application for judicial review.

**[16]** We find that the appellants had properly sought for the relief of declaration in their application for judicial review. The application for declaration was made jointly with the application for *certiorari* and *mandamus*. The fact that the prayers for an order for *certiorari* and *mandamus* were withdrawn does not affect the application. In any event, declaration may be granted by the court in appropriate cases even if it was not prayed for jointly or in the alternative with other remedies as decided by this court in the case of *Sivarasa Rasiah*, *supra*, at p. 420:

> To return to the construction to be given to O. 53 of the RHC, I turn to the second point I wish to make. It is the principle which governs the construction of rules of court. A rule of court should not be interpreted in such a way as to result in unfairness or produce a manifest injustice: *Bank of America National Trust and Savings Associations v. Chai Yen* [1980] 1 MLJ 198; *Sim Seoh Beng & Anor v. Koperasi Tunas Muda Sungai Ara* [1995] 1 MLJ 292. So here, a manifest injustice would occur if O. 53 of the RHC is read restrictively so as to permit an applicant to claim a declaration only where he applies for it jointly with some other remedy.
>
> I might add that under para. 1 of the Schedule to the CJA, which is drawn from art. 226 of the Indian Constitution and to which in material parts it is identical, our courts have power to issue such orders and grant such relief as is appropriate to the particular circumstances of a given case. Support for this view may be found in the decision of the Indian Supreme Court in *Dwarka Nath v. Income Tax Officer* AIR 1966 SC 81 ...

**[17]** Further, we are mindful of the predicament of the appellants if they were to proceed against the respondents under O. 15 r. 16 of the RHC for a declaratory judgment. In *Ahmad Jefri Mohd Jahri*, *supra*, the appellant commenced a writ action against the respondents rather than an application for judicial review under O. 53 of the RHC. The appellant had sought for a declaration that his dismissal by the respondents is void and of no effect and that he is still a government officer in the said Ministry. The writ and the statement of claim was struck out by the High Court on the ground that it was an abuse of process of the court. The appellant's appeal to the Court of Appeal was dismissed.

**[18]** On appeal to the Federal Court, the order of striking out was affirmed. The Federal Court states, at p. 897:

> However, O. 53 RHC sets out a specific procedure for an aggrieved party seeking relief, incorporating a declaration … against a public authority for infringement of his rights to which he was entitled to be protected under public law, to follow. It is our view that where such an explicit procedure is created (as compared to the a general provision set out under O. 15 r. 16 RHC) to cater for the purpose, then as a general rule all such application for such relief must commence according to what is set down in O. 53 RHC, otherwise it is liable to be struck off for abusing the process of the court.

**[19]** Given the Federal Court decision, we find that the suggestion by learned SFC that the appellants should seek declaratory relief against the respondents under O. 15 r. 16 of the RHC is not tenable.

**[20]** On the objection raised by learned SFC that the declarations sought for by the appellants concern future rights, we find guidance in the decision of the Federal Court in the case of *Datuk Syed Kechik*, *supra*, where the appellant had applied for a declaration, among others that he is a person belonging to the State of Sabah in accordance with the Immigration Act 1959/63. The learned High Court Judge in that case declined to grant the declaration sought on the ground that the application was premature and that the matter would be more appropriately dealt with under the special machinery provided by the Immigration Act. The appellant appealed to the Federal Court. In allowing the appeal the Federal Court states at p. 108:

> Indeed, we consider that a court should make it possible to settle real disputes immediately they arose, so that the parties may act with certainty and not be under the threat of legal uncertainty and should be able to discount the future.

**[21]** In the instant appeal, the appellants are naturally threatened by the act of the respondents and the appellants are facing legal uncertainty insofar as all other publications are concerned. Applying the pronouncement of the Federal Court above, we find that it is appropriate for the appellants to apply for the order of declaration in respect of all other publications.

**[22]** Finally, we take note that this appeal is in respect of an application for leave for judicial review where the threshold is very low. There is no necessity to go into the merits of the case at the leave stage. The test is to see whether the appellants had an arguable case and that the application is not frivolous (see *Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors* [2006] 1 CLJ 927). We find that the appellant had passed the threshold, for leave to be granted.

**[23]** We therefore unanimously allow the appeal with no order as to costs. We set aside the decision of the High Court dated 5 May 2014. The case is remitted to the High Court for the High Court to hear the application in relation to the reliefs prayed for in prayers 2(c), (e), (g), (h), (i), (j), (k), (l), (m) (n) (o), (p), (q), (t), (u) and (v) at pp. 70-77 of rekod rayuan jilid 1.